

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 791

Introduced by Senator Yee

February 27, 2009

An act to ~~amend Section 12302.25 of~~ *add Section 12302.27 to the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 791, as amended, Yee. In-home supportive services: providers: ~~county responsibilities.~~ *COBRA.*

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient or by or through contract by the county, qualified, aged, blind, and disabled persons receive services enabling them to remain in their own homes. ~~Counties are responsible for the administration of the IHSS program. Existing law requires that each county act as, or establish, an employer for IHSS providers for certain purposes, in accordance with state and federal law, as specified.~~

~~This bill would add to the laws for which a county is required to act as, or establish an employer for IHSS providers, a specified federal law relating to premium assistance for benefits under the Consolidated Omnibus Budget Reconciliation Act. By expanding county duties in this regard, this bill would result in a state-mandated local program.~~ *provide that, for purposes of in-home supportive services providers, the entity that administers health benefits under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) shall be the same entity*

that implements a specified federal COBRA subsidy program for these providers.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~yes~~-no.

State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12302.27 is added to the Welfare and
2 Institutions Code, to read:

3 12302.27. The entity that administers the COBRA health benefit
4 for in-home supportive services providers shall be the same entity
5 responsible for implementing the subsidy program in Title III of
6 Division B of the federal Recovery and Reinvestment Act of 2009
7 (Public Law 111-5) for these providers.

8 SECTION 1. ~~Section 12302.25 of the Welfare and Institutions~~
9 Code is amended to read:

10 ~~12302.25. (a) On or before January 1, 2003, each county shall~~
11 ~~act as, or establish, an employer for in-home supportive service~~
12 ~~providers under Section 12302.2 for the purposes of Chapter 10~~
13 ~~(commencing with Section 3500) of Division 4 of Title 1 of the~~
14 ~~Government Code, Title III of Division B of the federal Recovery~~
15 ~~and Reinvestment Act of 2009 (Public Law 111-5), and other~~
16 ~~applicable state or federal laws. Each county may utilize a public~~
17 ~~authority or nonprofit consortium as authorized under Section~~
18 ~~12301.6, the contract mode as authorized under Sections 12302~~
19 ~~and 12302.1, county administration of the individual provider~~
20 ~~mode as authorized under Sections 12302 and 12302.2 for purposes~~
21 ~~of acting as, or providing, an employer under Chapter 10~~
22 ~~(commencing with Section 3500) of Division 4 of Title 1 of the~~
23 ~~Government Code, county civil service personnel as authorized~~
24 ~~under Section 12302, or mixed modes of service authorized~~

~~pursuant to this article and may establish regional agreements in establishing an employer for purposes of this subdivision for providers of in-home supportive services. Within 30 days of the effective date of this section, the department shall develop a timetable for implementation of this subdivision to ensure orderly compliance by counties. Recipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service. Upon request of a recipient, and in addition to a county's selected method of establishing an employer for in-home supportive service providers pursuant to this subdivision, counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option.~~

~~(b) Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements.~~

~~(c) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.~~

~~(d) Prior to implementing subdivision (a), a county shall establish an advisory committee as required by Section 12301.3 and solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services.~~

~~(e) Each county shall take into account the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about the program on an ongoing basis.~~

~~(f) In implementing and administering this section, no county, public authority, nonprofit consortium, contractor, or a combination thereof, that delivers in-home supportive services shall reduce the hours of service for any recipient below the amount determined to be necessary under the uniform assessment guidelines established by the department.~~

~~(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.~~

~~(h) On or before January 15, 2003, each county shall provide the department with documentation that demonstrates compliance with the January 1, 2003, deadline specified in subdivision (a). The documentation shall include, but is not limited to, any of the following:~~

~~(1) The public authority ordinance and employee relations procedures.~~

~~(2) The invitations to bid and requests for proposal for contract services for the contract mode.~~

~~(3) An invitation to bid and request for proposal for the operation of a nonprofit consortium.~~

~~(4) A county board of supervisors' resolution resolving that the county has chosen to act as the employer required by subdivision (a) either by utilizing county employees, as authorized by Section 12302, to provide in-home supportive services or through county administration of individual providers.~~

~~(5) Any combination of the documentation required under paragraphs (1) to (4), inclusive, that reflects the decision of a county to provide mixed modes of service as authorized under subdivision (a).~~

~~(i) Any county that is unable to provide the documentation required by subdivision (h) by January 15, 2003, may provide, on or before that date, a written notice to the department that does all of the following:~~

~~(1) Explains the county's failure to provide the required documentation.~~

~~(2) Describes the county's plan for coming into compliance with the requirements of this section.~~

~~(3) Includes a timetable for the county to come into compliance with this section, but in no case shall the timetable extend beyond March 31, 2003.~~

~~(j) Any county that fails to provide the documentation required by subdivision (h) and also fails to provide the written notice as~~

1 ~~allowed under subdivision (i), shall be deemed by operation of~~
2 ~~law to be the employer of IHSS individual providers for purposes~~
3 ~~of Chapter 10 (commencing with Section 3500) of Division 4 of~~
4 ~~Title 1 of the Government Code as of January 15, 2003.~~

5 ~~(k) Any county that provides a written notice as allowed under~~
6 ~~subdivision (i), but fails to provide the documentation required~~
7 ~~under subdivision (h) by March 31, 2003, shall be deemed by~~
8 ~~operation of law to be the employer of IHSS individual providers~~
9 ~~for purposes of Chapter 10 (commencing with Section 3500) of~~
10 ~~Division 4 of Title 1 of the Government Code as of April 1, 2003.~~

11 ~~(l) Any county deemed by operation of law, pursuant to~~
12 ~~subdivision (j) or (k), to be the employer of IHSS individual~~
13 ~~providers for purposes of Chapter 10 (commencing with Section~~
14 ~~3500) of Division 4 of Title 1 of the Government Code shall~~
15 ~~continue to act in that capacity until the county notifies the~~
16 ~~department that it has established another employer as permitted~~
17 ~~by this section, and has provided the department with the~~
18 ~~documentation required under subdivision (h) demonstrating the~~
19 ~~change.~~

20 ~~(m) Section 10605 may be applied in each county that has not~~
21 ~~complied with this section by January 1, 2003.~~

22 ~~SEC. 2. If the Commission on State Mandates determines that~~
23 ~~this act contains costs mandated by the state, reimbursement to~~
24 ~~local agencies and school districts for those costs shall be made~~
25 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
26 ~~4 of Title 2 of the Government Code.~~

27 ~~SEC. 3.~~

28 ~~SEC. 2. This act is an urgency statute necessary for the~~
29 ~~immediate preservation of the public peace, health, or safety within~~
30 ~~the meaning of Article IV of the Constitution and shall go into~~
31 ~~immediate effect. The facts constituting the necessity are:~~

32 ~~In order to access federal funding at the earliest possible time,~~
33 ~~it is necessary for this act to take effect immediately.~~